

the Examiner has not provided the required evidence to support his position, Applicants nonetheless, in an effort to advance this case, submit herewith Declaration evidence which supports their assertion that targeting CD44 in mononuclear phagocytes would inhibit HIV infection. In that regard, particular attention is directed to paragraphs 4 and 5 of the attached Declaration which, it is earnestly believed, make clear the background against which the invention was made and the technical basis for Applicants' assertions regarding predictability *in vivo*, given the available data.

As regards the Examiner's comments at the top of page 4 of the Action, relating to Rivadeneira et al, clarification is requested. On their face, those comments are believed to miss the point of the present invention.

Finally, the Examiner is again reminded that a patent applicant enjoys the presumption that the invention can be practiced as claimed. The burden is on the examiner to provide evidence or reasoning inconsistent with the disclosure as to why such would not be the case. Respectfully, the broad brush assertions made by the Examiner here do not constitute such evidence or reasoning.

In view of the above comments and claim revisions and attached Declaration, the Examiner is urged to reconsider his position. It is believed that having done so, the Examiner will find withdrawal of the rejection to be in order.

Claim 8 stands rejected under 35 U.S.C. §112, first paragraph. Withdrawal of the rejection is submitted to be in order for the reasons that follow.

Insofar as the points raised can be viewed as relevant to claim 16 as now presented, Applicants again submit that the functional description of the recited "agent" is entirely appropriate and again point out that the Examiner's assertion that the claims cover a significant number of inoperative species is in error as the language of the claims avoids such species.

In addition to the above, the Examiner's attention is directed to the attached Declaration, specifically paragraph 6, which makes clear the ease with which suitable "agents" could have been identified.

In view of the above, reconsideration is requested.

In item (9) on page 5 of the Action, the Examiner makes reference to claim 11 and the recitation therein of A1G3. The above-noted revision of claim 11 is believed to moot this point.

Claim 11 stands rejected under 35 U.S.C. §112, second paragraph. Withdrawal of the rejection is submitted to be in order in view of the above-noted claim revisions. Reconsideration is requested.

Claims 8, 9 and 12 stand rejected under 35 U.S.C. §103 as allegedly being obvious over Ueno et al. in view of the AZT art. Withdrawal of the rejection is

**WEINBERG et al**  
**Serial No. 08/753,851**

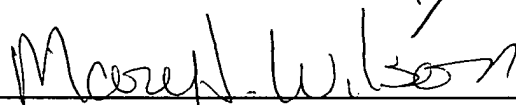
submitted to be in order in view of the above-noted claim revisions, offered for purposes of clarity. Reconsideration is requested.

This application is submitted to be in condition for allowance and a Notice to the effect is requested.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

By: \_\_\_\_\_

A handwritten signature in dark ink, appearing to read "Mary J. Wilson", is written over a horizontal line. A checkmark is visible to the right of the signature.

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